

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL WAYNE BEDWELL,

Defendant-Appellant.

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UNPUBLISHED

October 18, 2007

No. 272550

Macomb Circuit Court

LC No. 2005-005572-FC

Before: Wilder, P.J., and Borrello and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to 15 to 25 years' imprisonment for the second-degree murder conviction, and two years' imprisonment for the felony-firearm conviction. For the reasons articulated in this opinion, we affirm.

On the morning of November 20, 2005, defendant shot his girlfriend, Lisa Loncar, inside his apartment. Defendant had telephoned emergency services informing them that he had just shot his girlfriend inside his apartment. When police officers arrived at the scene, they discovered Loncar's dead body lying face-up on defendant's bed. They also found a broken, bloody lamp next to the bed. Testimony from medical examiner Dr. Daniel Spitz indicated that Loncar died as a result of a single gunshot wound to the left side of her forehead. Dr. Spitz also testified that in addition to the gunshot wound, Loncar had a broken left cheekbone, a laceration on her left eye, and several bruises that could have been caused by the gunshot or by a blunt object.

Officer David May examined the gun defendant used to shoot Loncar. He testified at trial that there were four live rounds inside the gun's cylinder. Going clockwise, there was one spent shell under the firing pin, three live rounds, an empty chamber, and then another live round. According to Officer May, this configuration indicated that, when defendant fired the gun, there were five live rounds inside the cylinder, with at least one live round on either side of the barrel. Therefore, it would have taken defendant three shots to "land" on the empty chamber.

Detective Daniel Klik interviewed defendant on the day of the shooting. Throughout the interview, defendant maintained that the shooting was an accident. He said that, on the morning of the shooting, he and Loncar argued while lying on his bed. After wrestling over a lamp,

defendant grabbed his gun and then pulled the trigger to scare Loncar. Defendant claimed that he was shocked when the gun fired. He explained that, as a safety precaution, he always loaded the gun with only five rounds. He kept a live round under the firing pin, and an empty chamber next to the barrel and firing pin, so that when the gun was cocked, it would “land” on an empty chamber or a “dud.”

Defendant first argues on appeal that the evidence presented at trial was insufficient to find him guilty of either first-degree or second-degree murder. Because defendant was not convicted of first-degree murder, we address his argument only to the extent that it relates to his second-degree murder conviction. We review sufficiency of the evidence claims de novo, determining whether the evidence, viewed in the light most favorable to the prosecution, warrants a rational trier of fact in finding that all the elements of the charged crime have been proved beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To prove second-degree murder, under MCL 750.317, the prosecution must show that there was: (1) a death, (2) caused by an act of defendant, (3) with malice, and (4) without justification or excuse. *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003). “Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). Malice may be defined as “acting in wanton and willful disregard of the possibility that death or great bodily harm would result,” and it can be inferred from evidence that the defendant “intentionally set in motion a force likely to cause death or great bodily harm.” *People v Bulls*, 262 Mich App 618, 626; 687 NW2d 159 (2004).

Defendant does not dispute that he caused Loncar’s death. Nor does he claim that the killing was justified or excusable. Rather, defendant argues that there is insufficient evidence to establish that he shot Loncar with malice. Despite defendant’s assertions to the contrary, the prosecution presented ample evidence that defendant intended to kill Loncar. Defendant admitted that, immediately before the shooting, he and Loncar argued and wrestled over a lamp and police officers found a bloody, broken lamp near Loncar’s body. Further, at the time of her death, Loncar had several injuries that could have been caused by a blunt object, such as a lamp. Based on this evidence, a reasonable jury could have concluded that defendant beat Loncar with the lamp before shooting her. Moreover, the evidence presented at trial established that defendant grabbed his gun, pulled back the hammer, and then pulled the trigger within two feet of Loncar’s head. See *Id.* at 627 (stating that malice may be inferred from the use of a deadly weapon).

Defendant’s primary argument at trial, and now on appeal, is that the shooting was accidental. During his police interview, defendant claimed that he was shocked that the gun actually fired. However, the jury was not obligated to accept defendant’s claim. And, it is a well-settled principle that “in reviewing a sufficiency argument, this Court must not interfere with the jury’s role of determining the weight of the evidence or the credibility of witnesses.” *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000). Moreover, even if the jury believed that defendant did not intend to harm Loncar, the facts and circumstances of the killing were such that malice could be inferred. A jury could reasonably infer that defendant set in motion a force likely to cause death by wielding a gun that he knew to be at least partially loaded

within two feet of Loncar's head, pulling back the hammer, and then pulling the trigger. See *Bulls, supra* at 626. Accordingly, we find that the prosecution presented sufficient evidence to convict defendant of second-degree murder.

Defendant further argues that, because there was insufficient evidence to support his murder conviction, his felony-firearm conviction should also be vacated. To establish a felony-firearm conviction, under MCL 750.227b, the prosecutor must show that, during the commission of a felony, defendant carried or possessed a firearm. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). Second-degree murder is a felony offense. See MCL 750.7; MCL 750.317. The prosecution presented sufficient evidence for the jury to find that defendant committed second-degree murder by fatally shooting Loncar. Therefore, there was more than enough evidence to support defendant's felony-firearm conviction.

Defendant next argues on appeal that Detective Klik offered impermissible opinion testimony. Because defendant did not object to the challenged testimony on the same ground that he now raises on appeal, this issue is not properly preserved, *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004), and we review for plain error affecting his substantial rights, *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004). Reversal is warranted only if plain error resulted in the conviction of an innocent defendant or "seriously affected the fairness, integrity, or public reputation of the judicial proceedings, independent of his innocence." *Id.*

At trial, the prosecutor questioned Detective Klik about the configuration of defendant's gun. The following exchange occurred:

Q [PROSECUTOR]. We have testimony from . . . Officer May . . . that it would have taken three shots in this instance for a dud to occur or no firing, correct?

A [DETECTIVE KLIK]. That's correct.

Q. Did you know that at the time you interviewed the Defendant?

A. I did not.

Q. Had you known that, would that have changed your interview tactics at all?

A. Yes, it would have.

Q. In what regard?

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A. The notion or the explanation that the gun was configured in such a way to be safe would have been thrown out, naturally, because in no way was it configured to be safe. It would have discredited his statement that indicated that it was somehow arranged in such a way to either provide for the safety of an eight year old intruder or for the safety of himself. It was absurd.

Q. . . . during your career interviewing suspects, have you found that they're always truthful to you regarding a crime?

A. Of course not.

On appeal, defendant argues that, by testifying that his claim about the configuration of his gun was “absurd” and that criminal suspects are not always truthful, Detective Klik offered an impermissible opinion about his credibility and, ultimately, his guilt or innocence. A witness cannot express an opinion on the guilt or innocence of a defendant, *People v Parks*, 57 Mich App 738, 750; 226 NW2d 710 (1975), and it is improper for a witness to provide an opinion on the credibility of another witness, *People v Smith*, 158 Mich App 220, 230; 405 NW2d 156 (1987). MRE 701 does, however, permit lay witness’ testimony in the form of opinions and inferences that are “(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.” The opinions of police officers, who have not been qualified as experts, are admissible under MRE 701 if they arise from the officers’ observations, they are generally based on common sense, and they are not overly dependent upon scientific expertise. *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 445-446; 540 NW2d 696 (1995); *People v Oliver*, 170 Mich App 38, 50; 427 NW2d 898 (1988), mod on other grounds 433 Mich 862 (1989).

While it is generally improper for a witness to comment on the credibility of another witness, *Smith*, *supra* at 230, defendant was not a witness at trial. More importantly, by testifying that defendant’s theory about the safety of his gun was absurd, Detective Klik did not provide an opinion on defendant’s credibility. Rather, the detective explained that defendant’s theory did not make sense in light of the fact that it would have taken three shots for defendant to “land” on the empty chamber. The detective based this conclusion on common sense and his testimony did not improperly interfere with the jury’s duty to determine defendant’s guilt or innocence. *Parks*, *supra* at 750. Furthermore, Detective Klik’s testimony, that criminal suspects are not always truthful while being interviewed, was based on his own experience. The testimony did not directly address defendant’s credibility and it did not imply that the detective knew something that the jury did not about defendant’s guilt or innocence. *Id.* Detective Klik’s testimony was properly admitted by the trial court. Moreover, there is no basis on which we can conclude that its admission was a plain, outcome determinative error. See *Carines*, *supra* at 763.

Defendant finally argues on appeal that the trial court violated his due process right to an impartial jury by referring to the jurors only by numbers. See US Const, Am VI, Am XIV. We disagree. We review defendant’s unpreserved claim for plain error affecting his substantial rights. *Id.* at 764. “The use of an ‘anonymous jury’ may promote the safety of prospective jurors, but at a potential expense to two interests of the defendant: (1) the defendant’s interest in being able to conduct a meaningful examination of the jury and (2) the defendant’s interest in maintaining the presumption of innocence.” *People v Williams*, 241 Mich App 519, 522-523; 616 NW2d 710 (2000). Therefore, to successfully challenge the use of an “anonymous jury,” the record must show that information was withheld from the parties, thereby preventing meaningful voir dire, or that the presumption of innocence was compromised. *Id.* at 523.

In this case, the trial court did not empanel an “anonymous jury” in the strict sense of the term. “An ‘anonymous jury’ is an extreme measure, in which ‘certain biographical information about potential jurors’ is withheld, even from the parties.” *Id.* Here, the jurors were merely referred to by numbers rather than by names during the trial. The record does not indicate that any biographical information about the jurors was actually withheld from the parties. Moreover, there is nothing in the record to indicate that the trial court’s use of numbers compromised

defendant's ability to examine the venire or that it undermined the presumption of innocence. Review of the voir dire demonstrates that defense counsel had access to the jurors' personal history questionnaires and defendant does not dispute that defense counsel conducted a meaningful examination of the venire. Further, there is no evidence that the jury understood the trial court's use of numbers to be out of the ordinary. Accordingly, we find that defendant's due process rights were not violated by the trial court's use of numbers. Moreover, because defendant failed to establish that he was prejudiced by the trial court's numbering system, there is no basis on which to conclude that the trial court's use of this system affected the outcome of the case. *Carines, supra* at 763-764.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Stephen L. Borrello  
/s/ Jane M. Beckering